



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1998

Ms. Deena J. Wallace
Assistant General Counsel
Texas A&M University System
John B. Connally Bldg.
301 Tarrow, 6th Floor
College Station, Texas 77840-7896

OR98-2892

Dear Ms. Wallace:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119893.

The Texas A&M University System (the "system") received two requests for information relating to its dog cloning project. You indicate that 359 pages of information have been released. You claim, however, that the documents submitted as Exhibits B and B1 are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 51.914 of the Education Code.¹ We have considered the exception you claim and have reviewed the documents at issue.

Section 552.101 of the Government Code excepts from disclosure information that is deemed confidential by law, including information made confidential by statute. You raise section 51.914 of the Education Code, which provides in pertinent part:

In order to protect the actual or potential value, the following information shall be confidential and shall not be subject to disclosure under Chapter 552, Government Code, or otherwise:

¹You also assert that section 552.107 excepts Exhibit C from disclosure. However, as you raised this exception after the statutory deadline, the exception is waived. Gov't Code § 552.301; *see* Open Records Decision Nos. 515 (1988), 473 (1987).

(1) *all information relating to* a product, device, or process, the application or use of such a product, device, or process, and all technological and scientific information (including computer programs) developed in whole or in part at a state institution of higher education, regardless of whether patentable or capable of being registered under copyright or trademark laws, that have a potential for being sold, traded, or licensed for a fee;

(2) *any information relating to* a product, device, or process, the application or use of such product, device, or process, and any technological and scientific information (including computer programs) that is proprietary information or a person, partnership, corporation, or federal agency that has been disclosed to an institution of higher education solely for the purposes of a written research contract or grant that contains a provision prohibiting the institution of higher education from disclosing such proprietary information to third persons or parties

Educ. Code § 51.914 (emphasis added). After reviewing your arguments and the submitted documents, we agree that this information is within the scope of section 51.914.

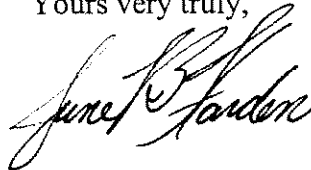
The legislature is silent as to how this office or a court is to determine whether particular scientific information has “a potential for being sold, traded, or licensed for a fee.” *See* Open Records Decision No. 651 (1997). Furthermore, whether particular scientific information has such a potential is a question of fact that this office is unable to resolve in the opinion process. *See id.* Thus, this office has stated that in considering whether requested information has “a potential for being sold, traded, or licensed for a fee,” we will rely on a university’s assertion that the information has this potential. *See id.*

You have been advised by the research scientists that the submitted information “most definitely has the potential for being sold, traded, or licensed for a fee.” As the system has determined that the information at issue is scientific information that has a potential for being sold, traded, or licensed for a fee, we will assume this determination is correct.² *See id.* Accordingly, we conclude that Exhibits B and B1 are made confidential by section 51.914 of the Education Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code. The remaining information must be released.

²Of course, the university’s determination that the information has a potential for being sold, traded, or licensed for a fee is subject to judicial review. ORD 651 at 10.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" and last name "Harden" clearly distinguishable.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 119893

Enclosures: Submitted documents

cc: Mr. Christopher Lee
Dallas Morning News
1005 Congress Avenue
Austin, Texas 78701
(w/o enclosures)

Mr. Blair L. Fannin
Business Writer
The Bryan-College Station Eagle
P.O. Box 3000
Bryan, Texas 77805
(w/o enclosures)